



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
2890 WOODBRIDGE AVENUE
EDISON, NEW JERSEY 08837-3679

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2013 JUN 24 P 3:27
REGIONAL HEARING
CLERK

JUN 20 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John R. Erickson, Counsel
Product and Trade Regulation
BASF Corporation
100 Park Avenue
Florham Park, New Jersey 07932

Re: In the Matter of BASF Corporation
Docket No. TSCA-02-2013-9108

Dear Mr. Erickson:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region 2.

Please note that the forty-five (45) day period for payment of the civil penalty commenced as of the date this Consent Agreement was signed by the Regional Judicial Officer. Please arrange for payment of this penalty according to the instructions given within the enclosed document under "Terms of Consent Agreement". Further, please ensure that a copy of your payment check or documentation of electronic payment is provided to the EPA staff member listed in that section of the Agreement.

Please contact Michael Bious of my staff at (732) 906-6892 or by electronic mail at bious.michael@epa.gov, should you have any questions regarding this matter.

Sincerely,


John Gorman, Chief
Pesticides and Toxic Substances Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2013 JUN 24 A 3:27

REGIONAL HEARING
CLERK

-----X
: In the Matter of :
: BASF Corporation : CONSENT AGREEMENT AND
: Respondent. : FINAL ORDER
: Docket No. TSCA-02-2013-9108
: Proceeding under Section 16(a) of :
: the Toxic Substances Control Act. :
-----X

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). Pursuant to 40 C.F.R. § 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22 (July 1, 2000), where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance of The United States Environmental Protection Agency, Region 2 ("EPA" or "Complainant"), alleges that BASF Corporation, ("BASF" or "Respondent") violated Sections 5 and 13 of TSCA, 15 U.S.C. §§ 2604 and 2612, and the regulations established under the authority of TSCA, set forth at 40 C.F.R. Part 720 (Premanufacture Notification) and 19 CFR Parts 12.118 - 12.121

(Import Certification) and that Respondent has thereby violated Section 15 of TSCA, 15 U.S.C. § 2614.

EPA and BASF agree that settling this matter by entering into this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22.

FINDINGS OF FACT

1. Respondent is BASF Corporation.
2. Respondent is a "person" within the meaning of 40 C.F.R. § 720.3(x).
3. Respondent is a "manufacturer" as that term is defined at 40 C.F.R. § 720(t).
4. Respondent is an "importer" as that term is defined at 40 C.F.R. § 720.3(l) and 19 C.F.R. § 101.1.
5. Respondent owns, operates and/or controls the facility in and around 100 Park Avenue, Florham Park, NJ 07932 (hereinafter, "Respondent's facility"), that is the subject of this Consent Agreement.
6. On or about March 20, 2013, Respondent voluntarily disclosed to EPA violations of Sections 5 and 13 of TSCA, 15 U.S.C. § 2604 and § 2612 by means of EPA's Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (April 11, 2000) policy (hereinafter "the disclosure").
7. On or about March 27, 2013, Respondent submitted a Low Volume Exemption Premanufacture Notification for a new chemical substance. This chemical substance is identified as L-13-230.
8. The disclosure included information that showed that Respondent imported small amounts of L-13-230, on six separate days during the September 2012 through March 2013 time

period.

9. The disclosure also included information that showed that Respondent failed to certify the six chemical imports described in paragraph 8, above, as required by Section 13 of TSCA and the regulations promulgated pursuant to Section 13 of TSCA set forth at 19 CFR Parts 12.118 - 12.121.

10. L-13-230 is a "chemical substance" as that term is defined at 40 C.F.R. § 720.3.

11. L-13-230 did not appear on the TSCA Chemical Substance Inventory during the time period described in paragraph 7, above.

12. Respondent did not submit a Premanufacture Notification (PMN) to the Administrator of the EPA at least 90 days prior to Respondent's importation of L-13-230.

13. Section 15(1)(B) and (C), 15 U.S.C. §§ 2614(1)(B) and (C), provide that it is unlawful for any person to fail or refuse to comply with any requirement prescribed by Section 5 of TSCA, 15 U.S.C. § 2604, or the regulations promulgated thereunder.

CONCLUSIONS OF LAW

1. Respondent is an importer of chemical substances and new chemical substances and is subject to the requirements of Section 5 of TSCA and the regulations promulgated pursuant to Section 5 of TSCA set forth at 40 C.F.R. Part 720.

2. Respondent is an importer of chemical substances and is subject to the requirements of Section 13 of TSCA and the regulations promulgated pursuant to Section 13 of TSCA set forth at 19 CFR Parts 12.118 - 12.121.

3. As an importer, Respondent is required to submit to EPA a Premanufacture Notification 90 days before importing a new chemical substance, as specified at 40 C.F.R. § 720.

4. Failure to submit a Premanufacture Notification in accordance with the requirements of 40 C.F.R. § 720 is a violation of TSCA Sections 5 and 15, 15 U.S.C. §§ 2607 and 2614.

5. As an importer, Respondent is required to certify imports of chemical substances as

specified at 19 CFR Parts 12.118 - 12.121.

6. Failure to certify a chemical import in accordance with 19 CFR Parts 12.118 - 12.121 is a violation of Sections 13 and 15 of TSCA.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits", 40 C.F.R. § 22.18 (64 Federal Register 40138, 40182-83 [July 23, 1999]) (hereinafter "Consolidated Rules"), it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall, comply with the following terms:

1. For the purposes of this Consent Agreement, Respondent: a) admits that EPA has jurisdiction to commence a civil administrative proceeding for the violations alleged in the "Findings of Fact" and "Conclusions of Law" sections, above; b) neither admits nor denies the specific factual allegations contained in this Consent Agreement; c) consents to the assessment of the civil penalty as set forth below; and d) consents to the issuance of the Final Order accompanying this Consent Agreement.

2. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Fifty Thousand Two Hundred Eighty Dollars (\$50,280)**, payable to the "Treasurer of the United States of America." The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document.

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000.

Alternatively, payment may be by Electronic Fund Transfer (EFT) directed to the Federal

Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account: 68010727
- 4) ABA number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency "
- 6) Name of Respondent
- 7) Docket Number

Promptly after payment has been made, Respondent shall send copies of this payment or furnish reasonable proof that such payment has been made to both:

Mr. Michael Bious
Pesticides and Toxic Substances Branch
2890 Woodbridge Avenue, MS-105
Edison, NJ 08837

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

Payment must be received at the above address (or account of EPA) on or before **45 calendar days** after the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the "due date").

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A

6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

3. Respondent is authorized to distribute and otherwise use all quantities of L-13-230 listed and described in Respondent's April 17, 2013 letter to EPA.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities under TSCA, 15 U.S.C. § 2601 *et seq.*, and the regulations promulgated thereunder, that attach or might have attached as a result of the "Findings of Fact and Conclusions of Law" section, above. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions or allegations contained in the "Findings of Fact and Conclusions of Law" section, above, or on any allegations arising thereunder. Respondent further waives its right otherwise to contest all such assertions and/or allegations.

7. Respondent waives any right it may have pursuant to 40 C.F.R. §22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

8. This Consent Agreement does not waive, extinguish, or otherwise effect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

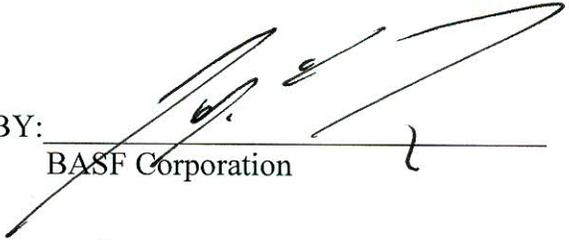
10. Each party shall bear its own costs and attorney fees in this matter.

11. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

Joe/NOE

BY:


BASF Corporation

NAME: Diego Lopez Casanollo
(PLEASE PRINT)

TITLE: SVP PERFORMANCE CHEMICALS

DATE: 06/10/2013

COMPLAINANT:


Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency - Region 2
290 Broadway
New York, NY 10007

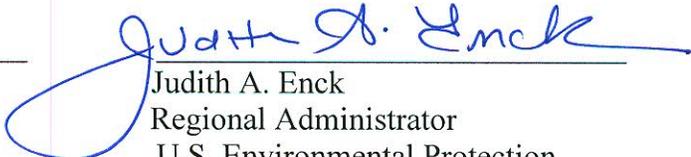
DATE: JUNE 13, 2013

DOCKET# TSCA-02-2013-9108

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement, entered into by the parties in full settlement of EPA's Administrative Action bearing Docket No. TSCA-02-2013-9108, issued in the matter of is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

DATE: 6/19/13



Judith A. Enck
Regional Administrator
U.S. Environmental Protection
Agency - Region2
290 Broadway
New York, NY 10007